

Message Text

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C O N F I D E N T I A L SECTION 01 OF 02 GENEVA 02447

E.O. 11652: GDS
TAGS: SHUM, UNHRC
SUBJECT: HUMAN RIGHTS COMMISSION--TORTURE

REF.: STATE 37067

SUMMARY: HUMAN RIGHTS COMMISSION HAS DECIDED TO WORK FROM BASIS OF SWEDISH DRAFT CONVENTION ON ELIMINATION OF TORTURE AND TO DEVOTE THREE WORKING SESSIONS TO ITS CONSIDERATION. US TRYING PERSUADE SWEDEN TO INVESTIGATE METHODS OF EXPEDITING WORK ON THE CONVENTION RATHER THAN STRETCH OUT CONSIDERATION IN COMMISSION OVER SEVERAL SESSIONS. INFORMAL CONSULTATIONS ON PROCEDURE AND SUBSTANCE UNDERWAY. END SUMMARY.

1. HUMAN RIGHTS COMMISSION BEGAN CONSIDERATION OF TORTURE ITEM AT THEIR FIRST WORKING GROUP ON FEBRUARY 10. SWEDES INTRODUCED THEIR DRAFT CONVENTION; CANADA URGED IT BE BASIS OF COMMISSION WORK. AMB. VANDEN HEUVEL INDICATED US WAS PREPARED TO INVESTIGATE POSSIBILITY OF LABELING
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TORTURE AN INTERNATIONAL CRIME AND URGED THAT CONSIDERATION OF DRAFT PREPARED BY INTERNATIONAL COMMISSION OF JURISTS NOT BE PRECLUDED.

2. ON FEB. 13, AMB. VANDEN HEUVEL MET WITH SWEDISH AMBASSADOR (DANELIUS) AND CANADIAN DEL TO DISCUSS METHOD OF PROCEDURE WITH RESPECT TO DRAFT. AMB. VANDEN HEUVEL

SAID US WOULD SUPPORT WORKING FROM SWEDISH DRAFT AND THAT WE WOULD DEFER CONSIDERATION OF WHETHER TO DENOMINATE TORTURE AN INTERNATIONAL CRIME IN ORDER NOT TO DELAY WORK. AMB. VANDEN HEUVEL THEN PRESSED DANIELIUS TO EXPLAIN HOW THEY ANTICIPATED COMMISSION TO HANDLE DRAFT. DANIELIUS EXPLAINED HE EXPECTED THE WG TO CONSIDER THE DRAFT, ARTICLE BY ARTICLE. US AND CANADA EXPRESSED CONCERN THAT COMMISSION NOT STAFFED WITH LEGAL EXPERTS, THAT COMMISSION AGENDA OVERCROWDED, THAT EXPERIENCE SUGGESTS COMMISSION WILL LABOR WITH CONVENTION FOR YEARS, AND THAT IN INTERIM, COUNTRIES WILL USE FACT OF DISCUSSION OF CONVENTION IN COMMISSION TO OPPOSE OTHER STEPS AGAINST TORTURE. DANIELIUS SUGGESTED THAT WG MIGHT BEGIN DISCUSSION AND IF IT PROCEEDS SLOWLY, THEN THEY MIGHT INVESTIGATE WAYS TO FACILITATE WORK. AMB. VANDEN HEUVEL SUGGESTED REFERRING CONVENTION TO EITHER AN INTERSESSIONAL WORK GROUP (FORMAL OR INFORMAL) OR TO SIXTH COMMITTEE OF GENERAL ASSEMBLY. AGREEMENT REACHED TO HOLD DISCUSSIONS WITH OTHER WEO'S AND THEN WITH OTHER REGIONS TO FIND OUT IF THERE ARE SERIOUS DIFFICULTIES WITH DRAFT AND TO INVESTIGATE ALTERNATIVES FOR FACILITATING COMPLETION OF THE DRAFT.

3. ON FEB. 14, THE BUREAU OF THE HRC DECIDED IT COULD ONLY ALLOT THREE WORKING SESSIONS FOR THE CONSIDERATION OF THE DRAFT CONVENTION. CHAIRMAN URGED INFORMAL CONSULTATIONS ON DRAFT IN MEANTIME.
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4. WEO'S MET FEB. 15 TO DISCUSS THE TORTURE ISSUE. WITH EXCEPTION US, FRG, NETHERLANDS, SWEDEN AND CANADA, DELS NOT PREPARED TO DISCUSS SUBSTANCE. US, CANADA AND NETHERLANDS TRIED TO FORCE DISCUSSION TO WAYS TO FACILITATE THE WORK ON THE DRAFT AND AGAIN SUGGESTED AN INTERSESSIONAL WORKING GROUP OR SIXTH COMMITTEE. SWEDES SEEM TO PREFER ARTICLE BY ARTICLE DISCUSSION IN COMMITTEE. DANIELIUS HOPEFUL THAT CONSIDERATION WOULD NOT TAKE SEVERAL YEARS BECAUSE DRAFT BASED ON TORTURE DECLARATION WHICH HAD BEEN ADOPTED BY CONSENSUS IN THE GA. DANIELIUS AGREED TO CONVENE INFORMAL GROUP OF INTERESTED COUNTRIES ASAP TO DETERMINE IF THEY ARE PREPARED TO DISCUSS THE SUBSTANCE OF DRAFT AND TO EXPLORE WHETHER THERE ARE BETTER WAYS TO EXPEDITE CONSIDERATION.

5. USDEL APPRECIATES PRELIMINARY GUIDANCE BY DEPARTMENT ON SUBSTANCE OF DRAFT CONVENTION (REFTEL). IN PREPARING ADDITIONAL GUIDANCE WHICH NEEDED ASAP AS SWEDISH DESIRE COMPILATION OF DIFFICULTIES WITH TEXT TO DETERMINE FUTURE COURSE OF ACTION, DEL REQUESTS DEPT CONSIDER

FOLLOWING ISSUES, WHICH HAVE BEEN RAISED BY OTHER
DELEGATIONS IN COURSE OF INFORMAL DISCUSSIONS:

(A) RE ARTICLE 1 OF SWEDISH DRAFT, IS TERM "PUBLIC
OFFICIAL" SUFFICIENTLY PRECISE? IS REFERENCE TO STANDARD
MINIMUM RULES, A NON-LEGAL DOCUMENT, APPROPRIATE OR IS
ITS PRESENCE CONFUSING AND POTENTIALLY DANGEROUS BECAUSE
IT MAY BE INTERPRETED THAT ANY VIOLATION OF MINIMUM
STANDARDS EQUALS TORTURE? SHOULD ALL PUNISHMENT WHICH IS
VALID IN COUNTRY CONCERNED AND WHICH IS EXPRESSLY PROVIDED
FOR IN LAW (E.G. CAPITAL PUNISHMENT, FLOGGING, ETC.) BE
EXCLUDED FROM TORTURE--IF NOT, COULD CAPITAL PUNISHMENT
BE CONSIDERED TORTURE BY OTHER COUNTRIES?

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C O N F I D E N T I A L SECTION 02 OF 02 GENEVA 02447

(B) RE EXPERTS ARTICLE III(C), SHOULD USDEL SUPPORT
CONCEPT OF CRIMINAL RESPONSIBILITY FOR PUBLIC OFFICIAL WHO
HAS KNOWLEDGE OF TORTURE BUT FAILS TO TAKE MEASURES TO
PREVENT TORTURE? USDEL NOTES SIMILAR CONCEPT EXISTS IN
ARTICLE 85 OF PROTOCOL I OF GENEVA CONVENTION.

(C) ARE ARTICLES 2 AND 3 OF SWEDISH DRAFT CONSISTENT WITH NUREMBURG CHARTER AND WITH LAWS OF WAR? DO AND SHOULD THEY PRECLUDE DEFENSE OF COERCION?

(D) WILL FEDERAL NATURE OF US GOVERNMENT INTERFERE WITH OBLIGATIONS UNDER ARTICLE 5 AND 6 OF SWEDISH TEXT?

(E) CAN US SUPPORT ARTICLE 12 OF SWEDISH TEXT EVEN IF IT BECOMES APPARENT THAT INTENT IS TO PROVIDE RIGHT OF COMPENSATION FROM FEDERAL OR STATE GOVERNMENTS?

(F) SHOULD US SUPPORT EXTENSION OF ARTICLE 13 SO THAT ANY INFORMATION DERIVED FROM STATEMENT GOTTEN BY TORTURE (E.G. PHYSICAL EVIDENCE) MUST ALSO BE EXCLUDED FROM CONFIDENTIAL

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PROCEEDING?

(G) VIEWS REQUESTED ON ARTICLE 27 WHICH SWEDES MEAN TO APPLY EVEN IF THERE IS NO DECLARATION MADE UNDER ARTICLE 8 OR 20, IMPLYING INFORMATION WOULD COME FROM NGO'S OR NEWSPAPERS. IN THIS REGARD DELOFF NOTES DEPT INSTRUCTION IN PARA 8 REFTEL THAT DELOFF SEEK PROVISION TO OPT OUT THIS ARTICLE OR ALTERNATIVE REPORTING MECHANISM FOR STATES NOT PARTY TO CIVIL AND POLITICAL COVENANT. DELOFF APPRECIATES REASON FOR THIS SUGGESTION BUT WONDERS WHETHER NON-PARTY TO HUMAN RIGHTS COMMITTEE COULD NOT ACCEPT ITS JURISDICTION FOR VERY LIMITED PURPOSES OF THIS CONVENTION. ALTHOUGH SWEDES HAVE INFORMALLY INFORMED US THAT THEY ARE WILLING TO MAKE REQUESTED CHANGES, THEY ARE CONCERNED ABOUT FURTHER WATERING DOWN THE TEXT.

(H) RE PARA 7 OF REFTEL, EFFECT OF THIS LANGUAGE SEEMS SUGGEST THAT STATE DOES NOT HAVE OPTION TO REFUSE EXTRADITION IN ORDER TO PROSECUTE. THIS LANGUAGE APPROPRIATE IN GENOCIDE CONVENTION SINCE ONLY STATE WITH JURISDICTION WAS STATE WHERE ACT PERPETRATED AND THEREFORE ENTIRE THRUST OF CONVENTION IS EXTRADITION. HOWEVER, IN HIJACKING CONVENTIONS AND HOSTAGES DRAFT, ADDITIONAL BASES OF JURISDICTION ARE PROVIDED AND EMPHASIS IS ON OPTION OF STATE TO PROSECUTE OR EXTRADITE. DELOFF FEARS INTRODUCTION OF THIS PROVISION SUGGESTS EXTRADITION IS FAVORED, OR REQUIRED.

(I) CANADIANS MAINTAIN IT IMPOSSIBLE FOR INDEPENDENT INSTRUMENT TO GIVE ADDITIONAL RESPONSIBILITIES TO HUMAN RIGHTS COMMITTEE;SWEDES MAINTAIN IT LEGAL IF GENERAL ASSEMBLY APPROVES. DELOFF INCLINED INTERPRET CONVENTION

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AS INVITATION TO HUMAN RIGHTS COMMITTEE TO ASSUME CERTAIN
RESPONSIBILITIES, WHICH IT MAY OR MAY NOT DO.
VANDEN HEUVEL

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